

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10689 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BIBIJAN, WIDOW OF ABDULRASID ABDULKADAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR JK PARMAR for Petitioner

MR SS PATEL AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 18th November, 1998, made by the

Commissioner of Police, Ahmedabad City, under the powers conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are found to be prejudicial to the maintenance of public order within the meaning of section 3 (4) of the Act and the explanation thereto. Four offences punishable under the Bombay Prohibition Act are registered against the petitioner, three of which are pending trial. The last of the offences registered on 11th November, 1998 was, on the date of the order, pending investigation. In each of the cases, the petitioner was found to be in possession of substantial quantity of country liquor. Besides, two individuals have given statements in respect of the nefarious activities of the petitioner and its adverse effect on the public tranquility and the even tempo of life. They have particularly referred to the incidents of 7th November, 1998, and 18th October, 1998 respectively. In each of the incidents, on the witness's refusing to submit to the demand made by the petitioner, the concerned witnesses were allegedly beaten by the petitioner and his associates in a public place. The petitioner is also alleged to have issued threat to the witnesses and the people gathered on the spot of the incident. In the incident of 7th November, 1998, the petitioner is also alleged to have used a knife for creating terror amongst the people. The petitioner's activities are thus found to be prejudicial to the maintenance of public order.

It is submitted that in respect of neither of the cases registered against the petitioner, the petitioner has been furnished the reports of the chemical examination. The said reports being vital documents, it was imperative for the Detaining Authority to consider and to supply the same to the petitioner along with the grounds of detention. In absence of such reports, the petitioner was unable to make an effective representation and therefore the petitioner's Constitutional right to make an effective representation is infringed. Hence, the continued detention of the petitioner is vitiated. It is further argued that the names and other particulars of the witnesses are wrongly withheld from the petitioner and thereby also the petitioner's right to make an effective representation is seriously prejudiced.

The petition is contested by the learned AGP Mr.

Patel. He has relied upon the records of the matter and submitted that in all the three criminal cases pending trial, the chargesheets were submitted long before the date of detention and along with each of the chargesheets, the petitioner had been supplied the report of the chemical examination also. With respect to the offence pending investigation, Mr. Patel has submitted that the said offence was registered on 12th November, 1998 and the report of the chemical examination was sent by the concerned Laboratory on 13th April, 1999. Thus, on the date of the detention, the said report was not available to the Detaining Authority and therefore, the question of considering or of supplying the same to the petitioner did not arise. With respect to the identity of the witnesses, I find that the Detaining Authority has personally examined the concerned witnesses and has recorded his satisfaction regarding genuineness of the apprehension voiced by them and need for withholding their identity from the petitioner. The power exercised under section 9 (2) of the Act, therefore, can not be said to be unwarranted. Besides, in respect of three cases pending trial, the reports of the chemical examination have been supplied to the petitioner along with the chargesheets long before the date of detention, and with respect to the one pending trial, the same being not available, neither the subjective satisfaction nor the order of detention can be invalidated for non-supply of such reports. No other ground is urged before me.

Petition is dismissed. Rule is discharged.

Mr. Parmar, the learned advocate appearing for the petitioner had moved an application being Civil Application No. 8430/99 for amendment to the petition which was allowed on 4th August, 1999. Accordingly, Mr. Parmar had added paragraph 11 (a) to the petition. In the said paragraph, it is contended that "the petitioner had requested the Detaining Authority to furnish the copy of the report of the FSL and statement of other witness which was recorded at the time of investigation. So far the detenu has not received any copy of the report of the FSL and the statement of the witness asked for. Till today the petitioner has not been supplied the aforesaid vital document for making an effective representation ". At the time of hearing, Mr. Parmar conceded that no such request was ever made to the Detaining Authority and he had added the aforesaid paragraph without seeking instruction from the detenu. I am distressed to note that the learned advocate has, without seeking instruction from the litigant, made a statement of fact, which is not true and on perusal of the record is proved

to be incorrect. Besides, the fact that the chargesheets have been submitted in the court and the reports from the FSL are furnished to the accused-petitioner along with the chargehseets, has also been suppressed from the Court. In my view, the learned advocate has failed to act as a responsible officer of the court. This is a fit case where the costs should be paid to the Government for making incorrect and irresponsible statement without instruction from the litigant. Mr. Parmar, therefore, shall pay the costs to the tune of Rs.500/-. The aforesaid amount of Rs.500/= shall be paid in Government Treasury within a period of ten days from today, and the Chalan be placed on the record of the matter within a period of fifteen days from today.

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JOSHI*